

SQUATTERS (RECOVERY OF LAND) ACT 2005

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REPUBLIC OF KIRIBATI
(No. of 2005)

I assent,

Beretitenti
2005

**AN ACT TO MAKE PROVISION FOR THE RECOVERY OF LAND FROM PERSONS
IN UNAUTHORISED OCCUPATION THEREOF, AND FOR RELATED MATTERS.**

Commencement:
2005

MADE by the Maneaba ni Maungatabu and assented to by the Beretitenti

PART I—PRELIMINARY

1. Short title

This Act may be cited as the *Squatters (Recovery of Land) Act 2005*.

2. Interpretation

In this Act, unless the context otherwise requires—

‘Court’ means the High Court of Kiribati;

‘land’ means land owned or leased by the Republic;

‘Rules of Court’ means the *High Court (Civil Procedure) Rules 1964*; and

‘senior Police officer’ means a Police officer of or above the rank of sergeant.

PART II—CIVIL PROCEEDINGS

3. Claim for recovery of land

- (1) Any person who claims possession of land which he or she alleges is occupied by a person who entered into or remained in occupation without his or her licence or consent, or that of any predecessor in title, may make application to the Court to recover possession of the land.
- (2) An application made under subsection (1) shall be accompanied by an affidavit of the applicant stating—
 - (a) the applicant’s interest in the land; and
 - (b) the circumstances in which the land has been occupied.
- (3) The application and the affidavit referred to in subsection (2) shall be prepared and filed in both the English and Kiribati languages.

- (4) Where the applicant does not know the name of a person in occupation of the land, the application may be brought against ‘persons unknown’ in addition to any named respondent.

4. Court to issue notice

Upon receipt of an application under section 3 the Court shall forthwith issue a notice (in both the English and Kiribati languages) commanding the respondent to appear and show cause on the date specified in the notice why the application should not be granted.

5. Service of documents

- (1) Where any person in occupation of the land is named in the application, the notice referred to in section 4, together with copies of all documents lodged in respect of the application, shall be served on him or her—
- (a) personally; or
 - (b) given to a person apparently over 18 years old, on, and apparently an occupant of, the land the subject of the application; or
 - (c) publishing the documents on at least two separate occasions in a newspaper circulating in the area in which the occupied land is situated; or
 - (d) in such other manner as the Court may direct.
- (2) Where the application has been brought against persons unknown, whether or not there are any named respondents, the notice referred to in section 4, together with copies of all documents lodged in respect of the application, shall be served by—
- (a) where appropriate, affixing copies of the documents to the main door or other conspicuous part of any premises on the occupied land; or
 - (b) placing stakes in the ground at conspicuous parts of the occupied land, to each of which shall be affixed a sealed transparent envelope addressed to “the occupiers” and containing copies of the documents; or
 - (c) publishing the documents on at least two separate occasions in a newspaper circulating in the area in which the occupied land is situated; or
 - (d) in such other manner as the Court may direct.
- (3) Service may be effected either by the applicant or by an officer of the Court but, in any event, the person effecting service shall forthwith file with the Court an affidavit setting out the means by which service was effected.

6. Application by occupier to be made a party

Any person not named as a respondent who is in occupation of the land and wishes to be heard on the question of whether an order for possession should be made may apply at any stage of the proceedings to be joined as a respondent.

7. Proceedings

- (1) If on the date specified in the notice issued under section 4 the respondent fails to appear then, upon proof to the satisfaction of the Court of the due service of such notice, the Court may order that the applicant recover possession of the land.

- (2) If the respondent appears the Court may proceed to hear and determine the matter or may set the case for hearing on a later date.
- (3) Where the case is set for hearing on a later date the Court may give such directions as to the further conduct of the proceedings as it deems appropriate.
- (4) If on the hearing of the matter the Court is satisfied that the applicant is entitled to possession of the land as against the respondent it shall order that the applicant recover possession of the land, but otherwise it shall refuse the application.
- (5) An order for possession may require that the respondent surrender possession forthwith, or at such later time as the Court deems appropriate.
- (6) An order for possession may include an order that the respondent refrain from re-entering the land the subject of the order.

8. Enforcement

An order for possession made under this Act may be enforced under the Rules of Court, save that the leave of the Court need not be obtained prior to the issue of a writ of possession.

9. Removal and disposal of chattels and structures

- (1) On the execution of a writ of possession to enforce an order for possession made under this Act it shall be lawful for the Sheriff to seize and remove any chattels and structures (not being fixtures) found on the land.
- (2) The expenses of removing, storing and keeping property seized and removed under subsection (1) shall be a charge thereon.
- (3) Where, after 21 days,—
 - (a) no person has claimed ownership of any property seized and removed under subsection (1); or
 - (b) where the expenses of removing, storing and keeping any property seized and removed under subsection (1) remain unpaid by the owner,such property may be sold by the Sheriff and the proceeds applied to defray all such expenses reasonably incurred, and any surplus shall be held by the Sheriff on behalf of the owner of the property, and shall be paid to him or her accordingly.
- (4) Where, after having taken reasonable efforts to sell property seized and removed under subsection (1), any property remains unsold the Sheriff may destroy such property in such manner as he or she deems appropriate.
- (5) Where property has been destroyed in accordance with subsection (4), the owner of such property shall not be entitled to compensation for the loss thereof.

10. Setting aside order

The Court may, on such terms as it deems appropriate, set aside or vary any order made under this Part.

PART III—SUPPLEMENTARY POLICE POWERS

11. Powers to remove trespassers on land

- (1) If a senior Police officer present at the scene reasonably believes that—
- (a) any person is trespassing on land; and
 - (b) such person is present there with the intention of residing there for any period; and
 - (c) reasonable steps have been taken by or on behalf of the person entitled to possession of the land to ask him or her to leave; and
 - (d) the Minister has given approval for the taking of action in respect of the subject land under this Part,

the officer may direct that person to leave the land and to remove any chattels and structures (not being fixtures) he or she has with him or her on the land.

- (2) A direction under subsection (1), if not communicated by the Police officer giving the direction, may be communicated by any Police officer at the scene.
- (3) Any person who, knowing that a direction under subsection (1) has been given which applies to him or her,—
- (a) fails to leave the land as soon as reasonably practicable; or
 - (b) having left, again enters the land as a trespasser within the period of three months beginning with the day on which the direction was given,
- commits an offence and is liable upon conviction to imprisonment for a term not exceeding two years or a fine not exceeding \$1000, or both.
- (4) Any Police officer who reasonably suspects that a person is committing an offence under this section may arrest that person.
- (5) Any Magistrates' Court shall have jurisdiction to hear, try and determine any criminal proceeding arising in or from a charge made before such court that any person has committed, or is suspected of committing, within the area over which such court has jurisdiction, any offence under this section.

12. Powers of seizure and removal

If a direction has been given under section 11 and a Police officer reasonably suspects that any person to whom the direction applies has, without reasonable excuse, failed to remove any chattel or structure which appears to the Police officer to belong to him or her or to be in his or her possession or under his or her control, the Police officer may seize and remove the chattel or structure.

13. Retention and disposal of seized property

- (1) Any property seized and removed by a Police officer under section 12 shall be passed into and remain in the custody of the Commissioner of Police until—
- (a) the Commissioner permits it to be removed from his custody by a person appearing to him to be the person from whom the property was seized or the owner of the property; or
 - (b) it has been sold or destroyed under this section.

- (2) The expenses of removing, storing and keeping any property seized and removed under subsection (1) shall be a charge thereon.
- (3) Where, after 21 days,—
 - (a) no person has claimed ownership of any property seized and removed under subsection (1); or
 - (b) where the expenses of removing, storing and keeping any property seized and removed under subsection (1) remain unpaid by the owner,
such property may be sold by the Commissioner and the proceeds applied to defray all such expenses reasonably incurred, and any surplus shall be held by the Commissioner on behalf of the owner of the property, and shall be paid to him or her accordingly.
- (4) Where, after having taken reasonable efforts to sell property removed under subsection (1), any property remains unsold the Commissioner may destroy such property in such manner as he deems appropriate.
- (5) Where any property has been destroyed in accordance with subsection (4), the owner of such property shall not be entitled to compensation for the loss thereof.

PART IV—MISCELLANEOUS

14. Regulations

The Beretitenti, acting in accordance with the advice of the Cabinet, may make regulations prescribing any matter necessary or convenient for carrying out or giving effect to this Act.

SQUATTERS (RECOVERY OF LAND) ACT 2005

EXPLANATORY MEMORANDUM

The problem of persons occupying land without authority has been a growing one in recent years, particularly on South Tarawa, and particularly on land leased to Government. This short Act seeks to reinforce the existing procedures for the removal of squatters from land, through simplification of the process for obtaining an order for possession from the High Court, as well as by strengthening the powers of Police to act where necessary.

The Act is divided into four Parts. Part I deals with preliminary matters, including definitions.

Part II provides for a simplified procedure for obtaining an order for possession from the High Court. It is closely modelled on the former Order 113 of the *Rules of the Supreme Court* of the United Kingdom (which has been replaced by Part 55 of the *Civil Procedure Rules*). Under the existing procedure, a person claiming a right to possession of land must take out a Writ of Summons and then wait several weeks for the procedural requirements to be satisfied before being able to request a trial date. The preliminary steps have been reduced to the filing of an application, at which time the Court allocates a date for hearing and issues a notice for service on those in possession of the land. It will be possible to proceed even where the identities of those in possession are not known. Service of the documents can be effected personally, or by displaying the documents in a prominent location at the site. Section 6 allows any person not named in the application who may be affected by the making of an order for possession to apply to be joined as a party to the proceedings. Where the order for possession is granted, it can be enforced by taking out a writ of possession, which directs the Sheriff to go on to the land and obtain possession of the land for the successful applicant. The Sheriff will also have the power to remove any chattels and non-permanent structures (such as *kiakia* or *buia*).

Part III sets out clearly the powers of the Police to enter on to land in the possession of trespassers and remove them and their belongings. It is based upon similar provisions in the United Kingdom *Criminal Justice and Public Order Act 1994*. A senior Police officer can give directions to persons on land without authority that they must leave immediately. Any person directed to leave land who refuses to do so, or who returns at any time in the next three months, can be arrested and is liable to imprisonment and a fine. As with the Sheriff, the Police will have the power to remove property from the land. Where property is not claimed within three weeks, or where the owner refuses to pay the costs of removal and storage, the Commissioner is empowered to sell or destroy the property seized.

Part IV deals with the power to make regulations for the effective implementation of the Act.

Titabu Tabane
Attorney-General
2 May 2005

CERTIFICATE OF THE CLERK OF THE MANEABA NI MAUNGATABU

This printed impression has been carefully examined by me with the Bill which passed the Maneaba ni Maungatabu on 16 June 2005 and is found by me to be a true and correctly printed copy of the said Bill.

Ioataake Timeon
Clerk of the Maneaba ni Maungatabu

CERTIFICATE OF THE SPEAKER OF THE MANEABA NI MAUNGATABU

I certify that the above Bill was on 16 June 2005 passed by the Maneaba ni Maungatabu upon a Certificate of Urgency under section 68(3)(a) of the *Constitution*.

Hon. Etera Teangana
Speaker of the Maneaba ni Maungatabu

Published by exhibition at the Maneaba ni Maungatabu this

day of _____, 2005.

Ioataake Timeon
Clerk of the Maneaba ni Maungatabu